

paragraph (c)(1), all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;

(B) Explain why the information is a trade secret or confidential commercial information;

(C) Explain in detail how disclosure of the information will result in substantial competitive harm;

(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and

(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) ODNI shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Director, IMO, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section

shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1700.11 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. 552 (b)(6) and (b)(7)(C). For purposes of this section, the following definitions apply:

(1) Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter that might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

§ 1700.12

(c) *Otherwise.* A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party consenting to disclosure of the information. However, any such statements shall be narrowly construed and the Director, IMO, in the exercise of that officer's discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1700.12 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures.

(b) *Procedure.* A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for requesting expedited processing. Within ten calendar days of its receipt of a request for expedited processing, the IMO shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable.

(c) *Determination to be made:* Requests and appeals will be taken out of order and given expedited processing treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public concerning an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

§ 1700.13 Right to appeal and appeal procedures.

(a) *Right to appeal.* Individuals who disagree with a decision not to produce a document or parts of a document, to deny a fee category request, to deny a request for a fee waiver or fee reduction, to deny expedited processing, or a decision regarding a fee estimate or a

32 CFR Ch. XVII (7-1-08 Edition)

determination that no records exist, should submit a written request for review to the Chief FOIA Officer c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. The words "FOIA APPEAL" should be written on the letter and the envelope. The appeal must be signed by the individual or his legal counsel.

(b) *Requirements as to time and form.* Appeals of adverse decisions must be received within 45 days of the date of the ODNI's initial decision. Requesters should include a statement of the reasons supporting the request for reversal of the initial decision.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two years or is the subject of pending litigation in the Federal courts.

§ 1700.14 Action by appeals authority.

(a) The Director of the Intelligence Staff, after consultation with any ODNI component organization involved in the initial decision as well as with the Office of General Counsel, will make a final determination on the appeal. Appeals of denials of requests for expedited processing shall be acted on expeditiously.

(b) The Director, IMO, will ordinarily be the initial deciding official on FOIA requests to the ODNI. However, in the event the Director of the Intelligence Staff makes an initial decision that is later appealed, the Principal Deputy Director for National Intelligence will decide the appeal in accordance with the procedures in this section.

PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

1701.1 Purpose, scope, applicability.

1701.2 Definitions.